

STATE OF MICHIGAN
COURT OF APPEALS

ERNEST R. ROBINSON,

Plaintiff-Appellant,

v

EHAB LEONE, HEATHER LEONE, and FIRST
NLC FINANCIAL SERVICES, L.L.C.,

Defendants-Appellees.

UNPUBLISHED

March 1, 2007

No. 266319

Wayne Circuit Court

LC No. 03-317303-CH

Before: Hoekstra, P.J., and Markey and Wilder, JJ.

PER CURIAM.

Following a bench trial, the trial court entered an order quieting title to real property in favor of plaintiff by nullifying two quitclaim deeds that purportedly conveyed the property to defendant Ehab Leone (“Ehab”), but the court upheld the validity of a mortgage executed by defendants Ehab and Heather Leone (the “Leones”) to defendant First NLC Financial Services, L.L.C. (“NLC”). The trial court later denied plaintiff’s motion for a new trial or a more definite statement and dismissed the Leones’ claim for the value of improvements to the property under MCR 3.411. Plaintiff appeals as of right, challenging the trial court’s failure to void the Leones’ mortgage. We affirm in part, reverse in part, and remand for further proceedings. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

We review equitable actions to quiet title de novo. *Beulah Hoagland Appleton Qualified Personal Residence Trust v Emmet Co Rd Comm*, 236 Mich App 546, 550; 600 NW2d 698 (1999). Questions of law are generally also reviewed de novo. *Richards v Tibaldi*, 272 Mich App 522 ; ___ NW2d ___ (2006), slip op at 4. The trial court’s findings of fact will not be reversed unless clearly erroneous. MCR 2.613(C); *Gorte v Dep’t of Transportation*, 202 Mich App 161, 171; 507 NW2d 797 (1993).

We agree with plaintiff that the trial court erred in confirming the validity of NLC’s mortgage, but disagree with plaintiff that the appropriate remedy is to require an order nullifying the mortgage in its entirety. The trial court’s ruling that the mortgage runs with the property is correct in light of the trial evidence that the mortgage was recorded, because “a properly recorded mortgage is notice to all subsequent purchasers that they take subject to any lien the mortgagor may have on the property whether the record has been examined or not.” *Ameriquist Mortgage Co v Alton*, ___ Mich App ___ ; ___ NW2d ___ (Docket Nos. 264213 and 264214, issued November 28, 2006), slip op at 5. But the act of recording the mortgage is not material

unless NLC has a legal or equitable right to enforce it against the property to collect the Leones' debt. "It is only when a party has a title, legal or equitable, in fact or of record, that he can give a valid legal mortgage upon land." *Weaver v Van Akin*, 71 Mich 69; 75; 38 NW 677 (1888) (Long, J.).

Because the trial court voided Ehab's title based on the forged deeds, NLC did not have a valid legal mortgage. A property interest cannot be acquired under a forged deed. See *Horvath v Nat'l Mortgage Co*, 238 Mich 354; 360-361; 213 NW 202 (1927). Therefore, it was incumbent on NLC to establish a superior equitable right to a mortgage interest in the property. See generally *Beuland Hoagland*, *supra* at 550.

We find merit to NLC's position on appeal that a court of equity has broad discretion to fashion an appropriate remedy to achieve justice in the case at hand. *Herpolsheimer v A B Herpolsheimer Realty Co*, 344 Mich 657, 666; 75 NW2d 333 (1956). "It is the historic function of equity to grant such relief as justice and good conscience requires." *Walch v Crandall*, 164 Mich App 181, 191; 416 NW2d 375 (1987).

We also find merit to NLC's position that the maxim that one who seeks equity must do equity is applicable in a case as this, where a mortgagee loans money in connection with a forged deed. *Richardson v Richardson*, 266 Mich 194; 253 NW 265 (1934). As applied in *Richardson*, however, an equitable mortgage was only recognized to the extent that benefit from the loan proceeds inured to the benefit of the property owner. In the case at bar, there is little factual development regarding the benefit, if any, that inured to plaintiff from the loan proceeds. Further, there is no indication in the record that the trial court decided this issue or otherwise applied equitable principles to uphold the mortgage. Rather, the record indicates that the trial court was steadfast in its determination that NLC would be allowed to retain the mortgage against the property, in its entirety, regardless of whether plaintiff could establish at trial that his signatures on the deeds to Ehab were forged.

We conclude that the trial court acted under a misconception of the law when it confirmed NLC's mortgage. The material question is whether NLC established an equitable right to a mortgage. Because the trial court did not decide this issue, we reverse its order confirming the validity of the mortgage and remand for further proceedings. On remand, the trial court may receive additional evidence and shall render factual findings and conclusions of law with regard to whether NLC had any equitable right to a mortgage against plaintiff's property and, if so, the appropriate amount of the mortgage. MCR 2.611(A)(2)(b) and (d).

Affirmed in part, reversed in part, and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Joel P. Hoekstra
/s/ Jane E. Markey
/s/ Kurtis T. Wilder